

§ 2.147

date of service of the petition. Petitions and responses to petitions, and any papers accompanying a petition or response, under this subsection shall be served on every adverse party pursuant to § 2.119(a).

(f) An oral hearing will not be held on a petition except when considered necessary by the Director.

(g) The mere filing of a petition to the Director will not act as a stay in any appeal or *inter partes* proceeding that is pending before the Trademark Trial and Appeal Board nor stay the period for replying to an Office action in an application except when a stay is specifically requested and is granted or when §§ 2.63(b) and 2.65 are applicable to an *ex parte* application.

(h) Authority to act on petitions, or on any petition, may be delegated by the Director.

(i) Where a petitioner seeks to reactivate an application or registration that was abandoned, cancelled or expired because papers were lost or mishandled, the Director may deny the petition if the petitioner was not diligent in checking the status of the application or registration. To be considered diligent, a petitioner must:

(1) During the pendency of an application, check the status of the application every six months between the filing date of the application and issuance of a registration;

(2) After registration, check the status of the registration every six months from the filing of an affidavit of use or excusable nonuse under section 8 or 71 of the Act, or a renewal application under section 9 of the Act, until the petitioner receives notice that the affidavit or renewal application has been accepted; and

(3) If the status check reveals that the Office has not received a document filed by the petitioner, or that the Office has issued an action or notice that the petitioner has not received, the petitioner must promptly request corrective action.

(j) If the Director denies a petition, the petitioner may request reconsideration, if the petitioner:

(1) Files the request within two months of the mailing date of the decision denying the petition; and

37 CFR Ch. I (7-1-05 Edition)

(2) Pays a second petition fee under § 2.6.

[48 FR 23142, May 23, 1983; 48 FR 27226, June 14, 1983, as amended at 63 FR 48100, Sept. 9, 1998; 64 FR 48924, Sept. 8, 1999; 68 FR 55769, Sept. 26, 2003]

§ 2.147 [Reserved]

§ 2.148 Director may suspend certain rules.

In an extraordinary situation, when justice requires and no other party is injured thereby, any requirement of the rules in this part not being a requirement of the statute may be suspended or waived by the Director.

CERTIFICATE

§ 2.151 Certificate.

When the Office determines that a mark is registrable, the Office will issue a certificate stating that the applicant is entitled to registration on the Principal Register or on the Supplemental Register. The certificate will state the application filing date, the act under which the mark is registered, the date of issue, and the number of the registration. A reproduction of the mark and pertinent data from the application will be sent with the certificate. A notice of the requirements of sections 8 and 71 of the Act will accompany the certificate.

[68 FR 55769, Sept. 26, 2003]

PUBLICATION OF MARKS REGISTERED UNDER 1905 ACT

AUTHORITY: Secs. 2.153 to 2.156 also issued under sec. 12, 60 Stat. 432; 15 U.S.C. 1062.

§ 2.153 Publication requirements.

A registrant of a mark registered under the provisions of the Acts of 1881 or 1905 may at any time prior to the expiration of the period for which the registration was issued or renewed, upon the payment of the prescribed fee, file an affidavit or declaration in accordance with § 2.20 setting forth those goods stated in the registration on which said mark is in use in commerce, specifying the nature of such commerce, and stating that the registrant

claims the benefits of the Trademark Act of 1946.

[31 FR 5262, Apr. 1, 1966]

§ 2.154 Publication in *Official Gazette*.

A notice of the claim of benefits under the Act of 1946 and a reproduction of the mark will then be published in the *Official Gazette* as soon as practicable. The published mark will retain its original registration number.

§ 2.155 Notice of publication.

The Office will send the registrant a notice of publication of the mark and of the requirement for filing the affidavit or declaration required by section 8 of the Act.

[64 FR 48924, Sept. 8, 1999]

§ 2.156 Not subject to opposition; subject to cancellation.

The published mark is not subject to opposition, but is subject to petitions to cancel as specified in § 2.111 and to cancellation for failure to file the affidavit or declaration required by section 8 of the Act.

[64 FR 48924, Sept. 8, 1999]

REREGISTRATION OF MARKS REGISTERED UNDER PRIOR ACTS

§ 2.158 Reregistration of marks registered under Acts of 1881, 1905, and 1920.

Trademarks registered under the Act of 1881, the Act of 1905 or the Act of 1920 may be reregistered under the Act of 1946, either on the Principal Register, if eligible, or on the Supplemental Register, but a new complete application for registration must be filed complying with the rules relating thereto, and such application will be subject to examination and other proceedings in the same manner as other applications filed under the Act of 1946. See § 2.26 for use of old drawing.

CANCELLATION FOR FAILURE TO FILE AFFIDAVIT OR DECLARATION DURING SIXTH YEAR

AUTHORITY: Secs. 2.161 to 2.165 also issued under sec. 8, 60 Stat. 431; 15 U.S.C. 1058.

§ 2.160 Affidavit or declaration of continued use or excusable nonuse required to avoid cancellation of registration.

(a) During the following time periods, the owner of the registration must file an affidavit or declaration of continued use or excusable nonuse, or the registration will be cancelled:

(1)(i) For registrations issued under the Trademark Act of 1946, on or after the fifth anniversary and no later than the sixth anniversary after the date of registration; or

(ii) For registrations issued under prior Acts, on or after the fifth anniversary and no later than the sixth anniversary after the date of publication under section 12(c) of the Act; and

(2) For all registrations, within the year before the end of every ten-year period after the date of registration.

(3) The affidavit or declaration may be filed within a grace period of six months after the end of the deadline set forth in paragraphs (a)(1) and (a)(2) of this section, with payment of the grace period surcharge required by section 8(c)(1) of the Act and § 2.6.

(b) For the requirements for the affidavit or declaration, see § 2.161.

[64 FR 48924, Sept. 8, 1999]

§ 2.161 Requirements for a complete affidavit or declaration of continued use or excusable nonuse.

A complete affidavit or declaration under section 8 of the Act must:

(a) Be filed by the owner within the period set forth in § 2.160(a);

(b) Include a statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the owner, attesting to the continued use or excusable nonuse of the mark within the period set forth in section 8 of the Act. The verified statement must be executed on or after the beginning of the filing period specified in § 2.160(a). A person who is properly authorized to sign on behalf of the owner is:

(1) A person with legal authority to bind the owner; or

(2) A person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the owner; or